

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JADE WILCOX, on behalf of)	Case No. 2:17-CV-122-RMP
herself and all others)	
similarly situated,)	May 25, 2017
)	Spokane, Washington
Plaintiffs,)	
)	Motion Hearing
vs.)	
)	Pages 1 - 39
JOHN BASTISTE, Chief of the)	
Washington State Patrol and)	
Agents of Defendants, and)	
Entity Does 1 through 300,)	
)	
Defendants.)	

BEFORE THE HONORABLE ROSANNA MALOUF PETERSON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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MOTION HEARING - MAY 25, 2017

1 (Court convened on May 25, 2017, at 10:31 a.m.)

2 THE COURTROOM DEPUTY: All rise.

3 (Call to Order of the Court)

4 THE COURT: Please be seated.

5 THE COURTROOM DEPUTY: We have *Jade Wilcox v.*

6 *John Bastiste*, Case No. CV-17-122-RMP, time set for motion
7 hearing.

8 Counsel, would you please make your appearances for the
9 record.

10 MR. JAMES SWEETSER: Jim Sweetser representing
11 Jade Wilcox and the putative class.

12 MR. JARRARD: Thomas Jarrard --

13 THE COURT: Good morning.

14 MR. JARRARD: Thomas Jarrard. Good morning, your
15 Honor.

16 THE COURT: Good morning, Mr. Jarrard.

17 MR. MARCUS SWEETSER: Marcus Sweetser.

18 THE COURT: Marcus --

19 MR. JAMES SWEETSER: Sweetser.

20 THE COURT: -- Sweetser. Okay. Good morning.

21 MS. WILLIAMS: Good morning, your Honor.

22 Shelley Williams here on behalf of Chief John Bastiste.

23 THE COURT: Okay. All right. Well, I will tell you
24 that I've read the entire motion package, reviewed the exhibits.
25 I am well informed I believe.

MOTION HEARING - MAY 25, 2017
COLLOQUY RE: DOCKET ENTRY NO. 11

1 I've also -- and I just want to make sure that the
2 plaintiffs have also had the opportunity of reviewing the
3 Government's -- and I'm going to use "Government" as a phrase
4 there. Is that okay? Any --

5 MS. WILLIAMS: Certainly, your Honor.

6 THE COURT: Okay. The Government's supplemental
7 response stating that, in fact -- and, Ms. Williams, if you'll
8 come to the podium, I just want to make sure I understand this;
9 that, in fact, Washington State Patrol, as of April 17th I
10 believe it was -- I'm going from memory until I can pull my
11 notes up -- is now also disclosing date of birth.

12 MS. WILLIAMS: Yes, your Honor. I believe it was a
13 week or so ago I realized that the State Patrol made a policy
14 decision and a change of their redaction practice. So I believe
15 it was as of April 24th the State Patrol's no longer redacting
16 dates of birth under RCW 42.56.240(1). When I became aware of
17 that, I asked Ms. Dolan to provide a supplemental Declaration.
18 I provided a supplemental response so that the Court and the
19 plaintiffs have the most up-to-date information.

20 THE COURT: Well, I appreciate that. So they're
21 actually revealing more information.

22 MS. WILLIAMS: At this time, all -- as I understand
23 it, all that's redacted on the collision report is the driver's
24 license number; and that's pursuant to a new exemption. I
25 believe it's 42.56.230, which is more specific for driver's

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 license numbers.

2 THE COURT: Okay. Okay. Thank you. I will hear from
3 the moving party.

4 MR. JARRARD: Just for the record, your Honor, we are
5 aware of Docket 11; and -- and that will be addressed in the --
6 in the response.

7 THE COURT: Okay. Good.

8 MR. SWEETSER: May it please the Court and Counsel, my
9 name's Jim Sweetser. I represent Jade Wilcox and the putative
10 class. I appreciate the fact that the Court has had the
11 opportunity to review all the pleadings and the exhibits, and so
12 I will address my points to the arguments set forth for the
13 Temporary Restraining Order.

14 There's four criteria that need to be established. We need
15 to establish there's a likelihood that we will succeed on the
16 merits; there's -- that there's a likelihood of irreparable harm
17 if temporary relief is not granted; and the relief we're asking
18 for is for the redactions of the names, addresses, and telephone
19 numbers in collision reports that derive as an original source
20 from the Department of Motor Vehicles or, at least in
21 Washington, the Department of Licensing.

22 Then I will address the other two factors: The balance of
23 the equities has to be in the plaintiffs' favor and the
24 temporary injunction is in the public interest.

25 The test is, basically, a balancing test. The more harm

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 that can be prevented by the Temporary Restraining Order the
2 less likelihood you have to -- need to prevail on the merits.
3 When you're looking at prevailing on the merits, you're not
4 saying, "Is this summary judgment?" There can be debatable
5 issues; but the Court has to look at all the case law, the scope
6 of the issue, and, if there is a likelihood we will win on the
7 merits, we've satisfied that prong.

8 But the first thing I want to go to is irreparable harm.

9 Now, when we filed the Complaint, we not only alleged that
10 Jade Wilcox was our client but that we will be moving for
11 certification of the putative class. Class-wide relief is
12 proper without class certification if the relief granted the
13 individual plaintiff necessarily includes similarly situated
14 persons. The putative class members are identically situated.
15 They're individuals that have been involved in motor vehicle
16 collisions, that have a driver's license, and have registered
17 their vehicles through the Department of Licensing and have
18 provided their personal information and highly personal
19 information to obtain those licenses.

20 The facts, for the most part, are really not in dispute.
21 We know that the information is being used by Craig Swapp for
22 purposes of solicitation. That's an impermissible purpose under
23 the DPPA.

24 We know that the Washington State Patrol is an authorized
25 recipient of DOL information to perform their government

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 function of completing collision reports.

2 We know that the Washington State Patrol discloses the
3 collision reports, re-discloses the information without
4 redaction of any personal information or highly personal
5 confidential information that's outlined in the Driver's Privacy
6 Protection Act.

7 In the brief filed by the State Attorney General, they
8 claim that there's no irreparable harm; and that, if we can't
9 show irreparable harm, we can meet all the other factors and
10 still it would be inappropriate for this Court to grant a
11 Temporary Restraining Order.

12 And it was interesting to me when I walked in and sat at
13 counsel table and it says, "Personal data identifiers must be
14 redacted." Evidently there's a recognition in this court that
15 some of these personal identifiers can and do result in
16 invasions of privacy and invasions of the home.

17 Your Honor, there is irreparable harm if the federal court
18 does not enforce the federal driver's protection act that's
19 available and provides protection to all licensed drivers and
20 vehicle -- and members of the community that have registered
21 their vehicles in the State of Washington.

22 I noted in the Attorney General's brief that she claims
23 collision reports are less frequent than, for instance, somebody
24 that has a car and has a driver's license and people can access
25 their driver's license, at least when the DPPA was enacted, to

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 access personal information.

2 But the Attorney General evidently admits, if driver's
3 license information is used to access personal information, then
4 the DPA -- DPPA would apply and personal and highly personal
5 information would be protected.

6 We are here representing the putative class for the last
7 four years. In Washington state, there's approximately 11,000
8 traffic collisions per month, approximately 120,000 per year.
9 Collision reports usually involve two drivers. That means
10 approximately 240,000 citizens of this state are having their
11 personal information available on the Internet without a review
12 process available to anyone for any purpose, including nefarious
13 means, identity theft, stalking, assault, mass marketing, and
14 solicitation. This means that, over a four-year period,
15 approximately a million people could be affected.

16 The information pulled from Craig Swapp's public disclosure
17 request for a five-month period shows 200 to 400 collision
18 reports per month, approximately 400 to 800 people affected each
19 month.

20 And this is not the only attorney, chiropractor, mass
21 marketers, solicitors that are accessing personal information
22 through collision reports.

23 It is the State's posting of this information on the
24 Internet available to everyone for whatever purpose that creates
25 the irreparable harm. No person involved in a crash can rest

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 assured that their personal information has not been
2 re-disclosed to an unknown recipient for an impermissible
3 purpose, such as, solicitation, identity theft, or stalking.
4 Hundreds of thousands of citizens in this state cannot feel safe
5 in their homes, under the State's main arguments, that personal
6 information in collision reports is exempt from the DPPA and,
7 therefore, using the personal information for solicitation and
8 other nefarious purposes is permissible.

9 Ms. Wilcox and all members of the putative class are still
10 at risk since their information will continue to be accessible
11 to anyone. There is an ongoing loss of privacy, not knowing,
12 not consenting, and still vulnerable to the release of the
13 information to whomever requests it. There is absolutely no
14 protection under the State's analysis; and, indeed, there is an
15 ongoing invasion of privacy -- the kind of privacy and freedoms
16 the law recognizes like the right to be left alone by other
17 people, the right to control the dissemination of information
18 about yourself, and the right to control when, to whom, and the
19 extent of the information disclosed.

20 People are aware of the past, and this Court can take
21 judicial notice of the tragedies that have resulted and the
22 foreseeable harms that will result from disclosure of personal
23 information. The Congressional Record is replete with specific
24 instances where innocent people have lost their lives and/or
25 property. Rebecca Schaeffer was murdered, Theresa Saldana was

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 assaulted because their addresses and names were released to the
2 general public. This is exactly the same information the State
3 Patrol claims they can release, and it's exactly the same
4 information that they released on Jade Wilcox and all putative
5 class members.

6 History has shown that unlimited and unrestricted access to
7 names, addresses, telephone numbers, and other protected
8 personal information required to obtain a driver's license is
9 dangerous and can lead to deadly results.

10 It is this loss of privacy in the sanctity of the home, the
11 one retreat to which men and women can prepare to escape from
12 the tribulations of their daily pursuits, that is surely of some
13 value. It is the State's interest in protecting the well being,
14 tranquility, and privacy of the home that is in the highest
15 order in a free and civilized society.

16 Once a collision report is impermissibly sold over the
17 Internet, or just released over the Internet, there's no
18 feasible way to protect the information. Personal information
19 is forever released in cyberspace for any nefarious purpose:
20 Identity theft, stalking, murder, fraud, theft, mass marketing,
21 solicitation.

22 The damage can only be minimized by redacting the personal
23 information from collision reports unless a permissible purpose
24 is shown under the DPPA. There is no adequate remedy at law.
25 The injuries suffered by Ms. Wilcox and the putative class

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 members is not merely a one-time invasion; but it is a
2 continuing, permanent irreparable harm. This is precisely why
3 the DPPA provides specifically for injunctive relief.

4 Defendants have indicated that there is no intention to
5 comply with the DPPA's mandate. Now Chief Bastiste is not even
6 redacting birth dates making identity theft even easier. As
7 long as the State allows personal information to be disclosed
8 from any crash from any time period, families must live in fear
9 for their privacy and the misuse of that information.

10 Ms. Wilcox and the putative class members continue to be
11 vulnerable to further disclosure of their protected personal
12 information.

13 Future Washingtonians involved in traffic collisions will
14 continue to be deprived of their driver's privacy protection
15 rights applicable to all Americans. Thus, plaintiff and the
16 putative class's privacy rights cannot be protected or fully
17 rectified after the fact of a final judgment.

18 Your Honor, I think the issue of balancing the equities and
19 balancing the public interests are very simple for the Court to
20 resolve. It's in the public's interest to protect privacy
21 rights for all the reasons stated and for all the reasons the
22 DPPA was enacted, the Congressional Record, the Congressional
23 intent, and the purpose behind the Act. I think it's real easy
24 to -- to -- when you're balancing the equities when you look at
25 the citizens of the State's privacy rights and you look at what

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 would be required of the State to implement the order, and it
2 would just be a matter of blacking out a name, an address, and a
3 birth date. And that could be done manually or it could be done
4 by just altering their computer system like they did on
5 April 17th to now disclose dates of birth. It's just a click of
6 the button. It's not onerous. It's not burdensome. The
7 balance of the equities clearly weighs in favor of plaintiff.

8 So now we get to the merits of the case. Is there a
9 likelihood to prevail on the merits? Now, the Court needs to
10 understand that we -- we haven't got all the discovery done.
11 We -- we haven't had disclosures, and we're at this point in the
12 case. There will be more information, and there can be
13 debatable issues.

14 But, when weighing all the law, the Court, at this time,
15 can make a finding on the merits that there is a likelihood that
16 we can -- can succeed on the merits. This isn't a frivolous
17 action.

18 This action is based upon proof and facts that are largely
19 undisputed. The issues in the case are: Is a collision report
20 a Department of Motor Vehicle record? And that issue has been
21 addressed, and there is one Arkansas case that has said that a
22 collision report is not a motor vehicle record. But there are
23 cases contrary to that -- and I've cited them in the brief --
24 where the Courts have said that the purpose of the DPPA is a
25 remedial statute. The remedial purpose is broadly construed,

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 and the exemptions are narrowly construed. So, when you take a
2 look at this section and it defines personal information to
3 include names, addresses, dates of birth, and then it says does
4 not include driving history, does not include accident reports,
5 and does not include -- there was one other thing. If the Act
6 can be construed and reconciled to be consistent with itself,
7 then that's what the Court should do.

8 And, when it says, "on accident reports," that has been
9 interpreted to mean "Yes;" and we're not disputing the collision
10 report is a public record that can be released.

11 What we are disputing is that the content, if it's
12 protected by the DPPA and it's derived from the original source,
13 the Department of Licensing, as a condition of obtaining a
14 driver's license or a vehicle registration, that information
15 remains protected. And, so, vehicular accidents or reports can
16 still be disclosed and the information, how the accident
17 occurred, what were the causes of the accident, you know, all
18 that sort of information that the State Patrol can -- can use to
19 compile and assess issues of public safety and -- and those
20 types of things, which is a legitimate government function.

21 But there's no legitimate purpose when they're performing
22 those functions and giving out names, addresses, and birth dates
23 to perform that function. Where's the list? Where's the proof
24 that all these names and addresses and birth dates are necessary
25 to perform the government function under RCW 46.52.060 as the

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 Attorney General claims?

2 Your Honor, this issue is really resolved by looking at the
3 United States Supreme Court mandate in *Maracich v. Spears* as
4 amplified and supportive of the U.S. Supreme Court *Reno v.*
5 *Condon*. And, in the Supreme Court case, the Supreme Court lays
6 forth the test that any exemption is very narrowly construed.
7 And, in that case, the argument was, well, we're performing a
8 government function and this is in anticipation of litigation.
9 That was a case where a person had filed an invasion of
10 privacy -- or a case and -- or not invasion of privacy but there
11 were -- it was a licensing thing where they were selling cars.
12 There were people selling cars, and he had one plaintiff. And
13 he decided to go out and access the DMV records and get names
14 and addresses of -- and birth dates of registered owners of
15 vehicles and then to send a letter to them saying that they're
16 potentially class members in the class and that they could join
17 in -- potentially join in the litigation.

18 And the Court said, we're going to draw a bright line rule;
19 and, if the predominant purpose is for solicitation, then the
20 Act clearly says explicitly that solicitation by attorneys is
21 not a permissible purpose under any of the exemptions.

22 Of course, the dissent just said, hey, this is too close to
23 call. It could be in anticipation of litigation. It could be a
24 function of government management or function of administration
25 of the Court, and the case was remanded back to determine what

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 the predominant purpose was. But, if it is -- the predominant
2 purpose is for solicitation, it was prohibited by the Act.

3 Now, the State Patrol does nothing -- absolutely nothing --
4 to determine whether or not these multiple requesters, these
5 people that are spending thousands and thousands of dollars each
6 month to obtain collision reports for the purpose of harvesting
7 names and addresses, electric (sic), ambulance-chasing
8 chiropractors, and other people to determine whether there's a
9 permissible purpose. They say they don't have to. We say they
10 have to.

11 This is not, when you're talking about federally protected
12 privacy rights, an arbitrary decision that the State can make to
13 disregard those rights, disregard the purpose of the statute,
14 and allow solicitation, which has been proven in this case, and,
15 potentially, other more dangerous identity thefts, stalking,
16 murder, domestic violence to occur.

17 If you look at the Eleventh Circuit and the Seventh Circuit
18 and they're coming to the same conclusions as the Supreme Court
19 has found with regards to the original source of the
20 information. They are coming to the conclusion that you have to
21 look at the source to determine whether it's permissibly
22 disclosed or not disclosed, and the original source doesn't
23 matter. It stays protected throughout its travels.

24 It says specifically in the DPPA that an authorized
25 recipient cannot re-disclose for an impermissible purpose. It

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 even goes further with private citizens that they have to keep a
2 log for five years if they re-disclose so they can justify that
3 their disclosures were made for permissible -- continued for
4 permissible purposes. The information throughout its travels
5 remains protected. Otherwise, it eviscerates the whole purpose
6 of the Act. Why even have the Act?

7 If you look at the time that the Act was amended in 1999,
8 what states were doing, where they were saying you have to opt
9 in to the DPPA. In other words, you have to affirmatively say,
10 "I want my information protected;" and Congress looked at that
11 and said, "No, no, States. No, no." You have to show express
12 consent. You have to get the consent of the recipient. And, if
13 you get the consent from the recipient for disclosure, then it's
14 disclosable for all purposes.

15 In this case and all putative class members, the Attorney
16 General and Chief Bastiste will not be able to show that consent
17 has been obtained. And, for all those reasons and if you look
18 at the state courts that have all been in accord with the same
19 reasoning of the original source and the information protected
20 throughout its travels, we're likely to prevail on this case.

21 THE COURT: Mr. Sweetser, let me ask you: Are you
22 also proposing that, in the collision reports, that names be
23 redacted or only the address, telephone number, date of birth?

24 MR. SWEETSER: The personal information says names,
25 addresses, date of births, and telephone numbers.

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 THE COURT: So you're suggesting that the names also
2 be redacted?

3 MR. SWEETSER: The names of the drivers if those names
4 are obtained from the Department of Licensing.

5 But that is an interesting question because the Act
6 protects the names; but, if the addresses and telephone numbers
7 are not provided, then that could also fulfill the purpose of
8 the Act because it prevents the identity theft. It prevents the
9 solicitation. It prevents all the -- the things that derive
10 from providing that highly -- that personal information. But,
11 if you apply the Act as written, it does provide that names,
12 addresses, telephone numbers should be not disclosed if they
13 originate from the act of obtaining a driver's license or a
14 vehicle registration.

15 THE COURT: So wouldn't that gut the public record
16 nature of a collision report and pretty much make it worthless
17 without names?

18 MR. SWEETSER: Well, the -- there are exceptions.
19 Okay. There's the anticipation of litigation. There's the
20 government function. In all those functions, you get that
21 information because it's being put to a legitimate use. So it
22 doesn't gut the Public Disclosure Act. And, when you look at
23 the Washington state law that provides for exemptions under the
24 Public Disclosure Act and --

25 THE COURT: Okay. That's in J? Exhibit J?

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 MR. SWEETSER: I -- I believe so but also the statute
2 itself, and I'll go to that real quick here. Yeah. It's --
3 it's the RCW 42.56.230, Exemption (7) (a), provides -- and
4 this -- this is in the Public Disclosure Request Act that
5 provides exemptions -- (Reading) Any record used to provide
6 identity, age, residential address, Social Security number, or
7 other personal information used to apply for a driver's license
8 or identified -- identification card is exempt.

9 And then it goes on to (7) (c), (Reading) Any record
10 pertaining to a vehicle license plate, driver's license, or
11 identification card under RCW 46.00.060 (sic) that, alone or in
12 combination with any other record, may reveal the identity of an
13 individual.

14 And -- and, so, the public record exemptions are consistent
15 with the purposes of the DPPA.

16 THE COURT: And, presumably, a law enforcement officer
17 conducting an investigation of a collision would ask someone
18 what their name was --

19 MR. SWEETSER: Yeah and --

20 THE COURT: -- and might confirm it with a driver's
21 license or something else; but, in fact, the testimony of the
22 individual who's there identifying themselves would actually be
23 the source of that information.

24 MR. SWEETSER: The -- the source of the information is
25 auto-populated through the driver's license, through a magnetic

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 card, that goes to databases; and the databases have been
2 created from the original source.

3 THE COURT: I'm just saying you could still have a
4 public record. You could still have a collision report that you
5 could release without information gleaned from there if -- if a
6 restraining order were put in place.

7 MR. SWEETSER: Yes.

8 THE COURT: It would just be not populating it from
9 the driver's license information.

10 MR. SWEETSER: Right. It is a public record, and it
11 is released. And our contention is that you have to apply the
12 DPPA personal information protections to the original source of
13 that information; and, therefore, it requires redaction even
14 though the public record is the collision report.

15 And cases have found that to be, in fact, the proper
16 procedure: The dissent in the *Reno* case -- or in the Arkansas
17 case; and, then, there's the *Camara* -- if I can find it real
18 quick here for you.

19 THE COURT: That's okay. I know what you're referring
20 to.

21 MR. SWEETSER: Yeah. That -- that's a state court
22 case that -- that basically said, Hey, you know, a driver's
23 license is derived from the Department of Motor Vehicles,
24 Department of Licensing. It's a motor vehicle record, that the
25 collision report is a public record, but the information

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
BY MR. SWEETSER

1 contained on the collision report is still protected by the
2 federal Driver's Privacy Protection Act. Otherwise, the entire
3 purpose of the Act, the Congressional intent, the remedial
4 purpose, and the narrow construction of the Act to fulfill its
5 purpose would be eviscerated.

6 THE COURT: So just to be sure that I understand what
7 you're asking, you would -- regardless of what the purpose was
8 in requesting these collision reports, you would be asking in
9 your TRO motion for all of the personal information to be
10 redacted --

11 MR. SWEETSER: That --

12 THE COURT: -- when it's released.

13 MR. SWEETSER: That's not exactly true because there's
14 14 exceptions to the DPPA; and one is anticipation of
15 litigation, one's government function, one's -- you know. But
16 there's all those exceptions.

17 All's we're asking for is that, if the State Patrol
18 releases that information, they -- there has to be a permissible
19 purpose.

20 THE COURT: Okay.

21 MR. SWEETSER: There has to be a review process.
22 Without that review process, then -- and somebody can't satisfy
23 one of those 14 exceptions, then, yes, you don't release the
24 personal information or the highly personal information.

25 THE COURT: All right. Thank you very much.

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 MR. SWEETSER: All right. Thank you, your Honor.

2 THE COURT: Ms. Williams.

3 MS. WILLIAMS: Good morning, your Honor. Again,
4 Shelley Williams, Assistant Attorney General, here on behalf of
5 Chief John R. Bastiste.

6 I think context is key to this litigation. For 80 years
7 the Chief of the Washington State Patrol has had the statutory
8 duty to file, tabulate, and analyze collision reports.

9 THE COURT: Okay. Ms. Williams, I'm just going to --
10 because of the time and the importance of all of these issues --
11 if you don't mind, I'd just like to direct some of your
12 conversation to the things that are of particular note to me.

13 MS. WILLIAMS: Certainly.

14 THE COURT: And I want to go to Exhibit J of 3-12,
15 which is the Public Records Exemption Codes. I went through in
16 detail in those codes and the exemption codes. It looks to
17 me -- and I realize that plaintiff had highlighted some parts.
18 I didn't realize that before I started highlighting them. So I
19 don't know which parts are the parts I highlighted versus the
20 plaintiff, but there are certainly parts that they highlighted
21 in orange. There seems to be plenty of exceptions that would
22 excuse the WSP from releasing this personal information.

23 How do you address that?

24 MS. WILLIAMS: Well, first, I'd like to say that the
25 exemption -- my understanding is the State Patrol is revising

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 its exemption code log as --

2 THE COURT: Okay. Well, whether -- what happens in
3 the future is not an issue for me right now. I have a TRO
4 request before me. So how do you explain it now?

5 MS. WILLIAMS: In terms of the state law exemptions,
6 42.56.230, my understanding is the State Patrol applies -- and I
7 apologize. It's actually 42.56.250. I -- I don't have the
8 statutes in front of me but the statutory exemption for records
9 used to prove identity. My understanding is the State Patrol
10 uses those for actual DOL records like the State Patrol asserts
11 the DPPA for actual DO -- DOL records: Vehicle registrations,
12 driver's licenses, but not the law enforcement records that may
13 copy information from those records.

14 And I'd submit that whether or not there's an exemption
15 under the public records act is not properly before this Court.
16 The cause of action before this Court is whether there's a DPPA
17 violation.

18 THE COURT: Okay. Let's go to the DPPA violation.
19 How do you justify Washington State Patrol's releasing personal
20 information, and what purpose does it serve Washington State
21 Patrol to do that other than getting money?

22 MS. WILLIAMS: And, if I may take a step back to the
23 context, the records we're talking about are collision reports.
24 We're not talking about a driver's license. We're not talking
25 about vehicle registration. We're not talking about raw

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 information from the DOL database.

2 THE COURT: But -- and I know that, in your briefing,
3 you tried to do a pea in a shell and move it around and say,
4 well, that isn't WSP information. That is, actually, Department
5 of Licensing information.

6 But let me ask you: Is it possible in Washington state to
7 get a driver's license without giving one's personal residential
8 address?

9 MS. WILLIAMS: To the best of my knowledge, no; but
10 I'd like to go back to the statutory language of the DPPA --

11 THE COURT: Okay.

12 MS. WILLIAMS: -- your Honor.

13 THE COURT: Go ahead.

14 MS. WILLIAMS: And I'd also like to discuss the
15 legislative history a little bit. Under --

16 THE COURT: Okay. Go ahead.

17 MS. WILLIAMS: I apologize, your Honor, if there's a
18 specific question you'd like me to answer.

19 THE COURT: Yes, I would. What possible reason does
20 WSP have for releasing information that every Washington driver
21 has to give up in order to get a driver's license when they are
22 releasing collision reports? Personal information that can be
23 exempted by Washington's own rules and which, at first blush,
24 appear to be excluded by the DPPA? What -- what reason does WSP
25 have for not doing that?

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 MS. WILLIAMS: Our public records act is a broadly
2 worded mandate for disclosure. Under RCW 42 -- or 46.52.030, it
3 defines what information needs to go into collision reports.
4 That RCW identifies the entity of the parties involved as
5 material information.

6 THE COURT: Okay. So the names of the parties. What
7 else is required?

8 MS. WILLIAMS: I'd submit that addresses and dates of
9 birth are a means to identify the person involved in the
10 collision. There may be 50 John Smiths. By adding the address
11 and the date of birth will help identify who is a party to that
12 collision.

13 It is for transparency. It is required under our state
14 public records act. And, I think, if we want to get to how the
15 DP -- assuming -- assuming that the DPPA applies to these
16 records, (b) (14) -- 2721(b) (14), that was the exemption that the
17 DPPA discussed in the New Richmond police case. In that case,
18 the Court of Appeals for the State of Wisconsin found that the
19 police department could disclose those police reports because
20 the state law required collision reports to be open to the
21 public. Collision reports are motor vehicle -- or information
22 about motor vehicle safety.

23 And, yes, our state statute is not as explicit as the
24 Wisconsin statute; but we go to *Gendler v. Bastiste*. And our
25 State Supreme Court, which is the ultimate authority on

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 Washington law, has found that collision reports are public
2 records that should be disclosed.

3 THE COURT: Okay. Collision reports and the name of
4 the individuals involved but not their telephone numbers or
5 personal addresses. And, in fact, the personal addresses are
6 the part that put people at risk.

7 Would you -- would you, just personally, have any problem
8 with your personal address being out on the Internet?

9 MS. WILLIAMS: If I may speak from personal
10 experience, an individual, who had a bone to pick with me
11 because of my work at the AG's office, did find my home address;
12 but it wasn't through collision records. It was through voter
13 registration records.

14 THE COURT: So let's go back to: Do you feel that you
15 had some injury from having your address out through the voter
16 registration records? Would that person have as easily found
17 you if it was not out on the Internet?

18 MS. WILLIAMS: Probably not but it goes back to the
19 idea of irreparable harm; and it goes back to the idea that this
20 information -- name, address, date of birth -- is not inherently
21 confidential.

22 THE COURT: Okay. I have a problem with that.

23 MS. WILLIAMS: Okay.

24 THE COURT: I think it is inherently confidential if
25 one is not willingly disclosing it. And one is not willingly

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 disclosing it in order to get a driver's license in the State of
2 Washington. One is forced to give out that information as I
3 understand your comment and from my personal experience.

4 So, if it's not willingly being disclosed, then it would
5 arguably be confidential.

6 MS. WILLIAMS: No, I -- and I respectfully disagree
7 with that; that personal information, name and address, is given
8 out in a variety of circumstances. And --

9 THE COURT: Voluntarily.

10 MS. WILLIAMS: Voluntarily or involuntarily. And I
11 think -- there are only two cases cited in the plaintiffs'
12 briefs that adopted the logic that the DPPA follows the
13 information throughout its travels in terms of accident reports
14 and that was *Whitaker*, which is unpublished, and *Pavone*, which
15 is published. And it relied on, I believe, a misreading of
16 *Senne v. Village of Palatine*.

17 Now, *Senne v. Village of Palatine*, at least the first 2012
18 *en banc* opinion, was interpreted to mean that law enforcement
19 records are subject to the DPPA and subsequent disclosure of
20 those law enforcement records have to be a permissible use under
21 the DPPA.

22 But, when it went back up -- and the citation for the
23 second review is 784 F.3d 444. When it went back up to the
24 Seventh Circuit, the question was not whether providing the
25 parking ticket in response to a public records request was a

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 permissible use under the DPPA. The question was whether
2 disclosure of each piece of information on that public -- on
3 that parking ticket met a legitimate government need under
4 (b) (1). And the Seventh Circuit found that it met that
5 legitimate need.

6 And the Seventh Circuit also used a bit of a balancing test
7 and looked at: What is the Government's need for disclosing
8 this information on a parking ticket versus the privacy
9 interest? And I'd submit, under that analysis, the State Patrol
10 is well within the DPPA.

11 THE COURT: Okay. Explain to me how. And this goes
12 back to what possible purpose is there, you know, other than
13 you've already said, well, it's to determine which Mr. Johnson
14 or which Ms. Johnson is being referred to.

15 But I just think this seems ripe -- confrontational to the
16 DPPA and especially when it's -- let's go to the point which the
17 plaintiffs have brought this up about, which is solicitation by
18 attorneys. What possible purpose is there that Washington State
19 has in releasing that kind of personal information without
20 inquiring whether it's going to be for solicitation?

21 MS. WILLIAMS: The purposes are mandated under the
22 public records act. The purpose is that accident reports are
23 different. And, if you look back at the Congressional debate --
24 and I'm referring to 139 Congressional Record S15745-01. In
25 that record, Senator Hatch expressed concerns by his media

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 constituents that the DPPA would prevent the media from
2 accessing driving histories; would prevent the media from
3 knowing whether, say, a pilot was a safe driver; whether a
4 police officer had a DUI.

5 And later in that Congressional Record at S15763-364,
6 Senator Boxer stated, and I quote, "Under this amendment,
7 personal information is defined as including a driver's name,
8 address, phone number, and Social Security number. It does not
9 include information on a driver's accidents, violations, or
10 status. Let me repeat that. Nothing in this bill will stop the
11 press, insurance companies, employers, or anyone else from
12 obtaining information about an individual's driving record."

13 THE COURT: Okay. So, from your quote, that says
14 specifically that the driver's name, address, and Social
15 Security number should be excluded.

16 MS. WILLIAMS: I agree with the Social Security
17 number; but, without the identifying information of who was
18 involved in the collision, the collision report has very little
19 meaning. In the *Camara* case cited in plaintiffs' brief, that
20 dealt with -- I believe it was a public entity requesting the
21 driving histories of its employees. And there's language in
22 that case that the DPPA does not require driving histories; and
23 I'd submit, by extension, accident reports be excised of all
24 personal information. Otherwise, it's only valuable for
25 statistical purposes. There may be a bad intersection. There

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 may be a bad curve, and the general public would want to know
2 what happened and may want to contact the involved drivers.

3 THE COURT: Okay. So, as I understand the plaintiffs'
4 position, if, in fact, the situation, such as, litigation or an
5 actual inquiry or discovery into an actual accident, that would
6 be an exemption under the DPPA; and they are not asking for
7 redaction. So it would serve that purpose.

8 So let's go back to what they are objecting to, which is
9 how is it that the WSP can justify giving this personal
10 information to solicitors, to -- to be able to contact people
11 just because they've been in a collision when you have a slough
12 of exemptions under state law and where that does not appear to
13 be an exemption under the DPPA?

14 MS. WILLIAMS: First, I don't believe the DPPA has an
15 exemption or permissible use for a media watch -- for the media
16 or public watchdog. I don't know what exemption would provide
17 -- allow the State Patrol to disclose under the DPPA an
18 unredacted collision report to the media.

19 THE COURT: So, if the media were to ask, certainly
20 WSP or the State Legislature could come up with a media
21 exemption if they so wanted.

22 MS. WILLIAMS: If the DP -- it would require Congress
23 to amend the DPPA, but I think the fundamental question is
24 whether the DPPA applies to these records.

25 THE COURT: And why would it not? I know you say it's

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 because the WSP hasn't created these records. They've just
2 taken information through that software program, whatever it was
3 called, and which self-populates the forms from -- you know,
4 into a collision report from the bar code of the driver's
5 license. But WSP clearly is getting that information from the
6 bar code from the driver's license, which is not voluntarily
7 given for a full disclosure by any individual.

8 MS. WILLIAMS: And, your Honor, just to clarify, the
9 State Patrol's argument is not that the driver's license is not
10 a motor vehicle record. I think the path here is there's a
11 collision under 2721(b)(1), government use. The trooper can
12 take the driver's license, can scan it, and have the form
13 populate or, in the old days, write it down. I don't think
14 anyone is arguing that that is not a permissible use. I'd
15 submit, at that point, the DPPA ends because there are certain
16 permissible uses that are inherently public.

17 I think the fatal flaw with the argument that the DPPA
18 follows the personal information through its travels is that it
19 doesn't just apply to collision records. It applies -- it
20 applies to DUI reports. It applies to vehicular homicide
21 reports. It applies to any record where identifying information
22 was taken from a driver's license. It would apply to this
23 Court's own court files.

24 Ms. Wilcox filed a copy of her PTCR in this court file.
25 Under plaintiffs' argument, if someone wanted to buy the

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 exhibits for -- I think it's \$0.10 a page, that would be a DPPA
2 violation. There would have to be another permissible use.

3 I think the better reading, the one that is consistent with
4 the plain language of the statute, the one that's consistent
5 with the legislative history, and the one that harmonizes both
6 the DPPA and our state public records law is that, once that
7 information is put to a permissible use, whether in a collision
8 report, whether in a vehicular homicide report, whether in a
9 court record, then part and parcel of that permissible use is
10 public disclosure of that information.

11 And I want to be clear that we're not talking about highly
12 personal information. The PTCR has limited fields. It doesn't
13 have a Social Security number. It doesn't have the driver's
14 photograph. The only possible reference to medical information
15 is if there's a restriction on the driver's license. So, for
16 example, myself, I have a corrective lens restriction. There
17 might be a note. I believe there's a code that the person might
18 have a medical file at DOL, but it would not -- but it would
19 not --

20 THE COURT: Such as, epilepsy.

21 MS. WILLIAMS: But it would not say this person has
22 epilepsy. It would not say this person has a particular
23 disorder or medical condition. It would just note that there's
24 a medical record at DOL.

25 And I'd submit that is material information to a collision.

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 The purpose of collision reports is not only to document what
2 happened but to enable people to understand what happened and
3 why it happened -- why it happened, and a medical condition may
4 be a contributing factor.

5 THE COURT: So just so I'm perfectly clear on your
6 argument, once someone has a collision in Washington state and
7 the Washington State Patrol drafts up a collision report, which
8 would be a permissible purpose under DPPA, then all protection
9 of DPPA ends. That's your position?

10 MS. WILLIAMS: That there are certain permissible
11 uses -- like a collision report, like filing something in open
12 court -- that carry with it inherent, broad public disclosure.
13 And a collision report -- our state law requires collision
14 reports. Our state law requires identifying the people in a
15 collision.

16 THE COURT: So, just -- you know, I'm trying to
17 understand your argument. So that called for a "Yes" or "No"
18 answer.

19 MS. WILLIAMS: My apologies.

20 THE COURT: So let me say it again and see if I've got
21 it right. Your position is that, once someone has been in a
22 collision and the WSP drafts up a collision report and pulls all
23 of their personal information from their driver's license and
24 puts it in that collision report, then that can be -- that
25 collision report can be re-distributed without any violation of

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 DPPA and can be re-distributed for any purpose and to any person
2 or entity.

3 Is that correct? "Yes" or "No."

4 MS. WILLIAMS: Correct if I may provide one
5 qualifier --

6 THE COURT: Certainly.

7 MS. WILLIAMS: -- that the information on the PTCR is
8 limited. Again, we're not talking about Socials --

9 THE COURT: Wait. Define "PTCR."

10 MS. WILLIAMS: My apology --

11 THE COURT: What is "PTCR"?

12 MS. WILLIAMS: My apologies, your Honor. PTCR stands
13 for Police Traffic Collision Report. It is the report that
14 Ms. Wilcox filed with her -- I believe it was her Declaration or
15 someone else's Declaration.

16 And it's a standardized form. 46.52.030 requires certain
17 information to be on a collision report. The PTCR is that
18 standardized form, and I apologize for using the acronym.

19 THE COURT: No, that's okay. So anything that the WSP
20 puts on this PTCR is, then, no longer covered by DPPA and can be
21 disclosed to anybody on the Internet, sold, re-sold. That's
22 your position. Correct?

23 MS. WILLIAMS: Yes, given the limited information on
24 the PTCR.

25 THE COURT: All right. Anything else you want to say?

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 And you're still stating that, under the Washington public
2 disclosure -- you know, the exemptions as indicated in Exhibit J
3 -- those are not applicable.

4 MS. WILLIAMS: If -- I believe it's 42.56.230 -- and I
5 apologize. I don't have the statute. 250, it might be
6 Subsection (7). My understanding is the State Patrol asserts
7 those are actual DOL records in the same manner it asserts DPPA
8 for actual DOL records. It does not assert those exemptions for
9 law enforcement records that may have copied information from a
10 driver's license or from the DOL database.

11 THE COURT: So the answer is: Those don't apply in
12 your view.

13 MS. WILLIAMS: Correct, your Honor.

14 THE COURT: All right. Anything else you'd like to
15 say?

16 MS. WILLIAMS: If I have any time left, if I --

17 THE COURT: You know, Mr. Sweetser went on quite a
18 bit. I do have an 11:30 video conference. So, if you would
19 like to say something more and then I'm going to have to limit
20 Mr. Sweetser, also; but please go ahead.

21 MS. WILLIAMS: I would just like to end with the
22 public interest. Equitable relief is to preserve the status
23 quo. The status quo is disclosure of these collision reports.
24 The status quo is allowing the public to know who was involved
25 at a collision.

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
RESPONSE BY MS. WILLIAMS

1 And I would urge this Court to, again, consider the
2 consequences of plaintiffs' analysis. It's not just collision
3 reports. It's DUI reports. It's court records.

4 And I'd submit to this Court that the public interest is to
5 wait on temporary injunctive relief. Let the parties fully
6 vet -- fully brief this issue. Let this -- let the parties
7 fully flesh out all the arguments and maintain the status quo.

8 THE COURT: You know, Ms. Williams, I actually do have
9 one more question that kind of you've sparked and, that is, what
10 would be the injury to WSP to impose a Temporary Retraining
11 Order? How much work would it be to just block out that
12 personal information on reports that you are selling?

13 MS. WILLIAMS: In my understanding, it would require a
14 programming fix; but it's -- and I -- I'd submit, also, that
15 plaintiffs haven't specifically and precisely defined what
16 they're asking for in terms of temporary injunctive relief. At
17 parts in their briefing, they ask for the registered owner's
18 personal information to be redacted. At other parts of their
19 briefing, they ask for all personal information to be redacted.
20 Today plaintiffs' counsel indicated that, well, if there's a
21 permissible use under the DPPA, that it could be released.

22 And it's not just -- it's not just redaction of the
23 personal information. It's also going to be what is -- what
24 would be permissible under the DPPA.

25 And I'd submit that it would also have a chilling effect on

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
REPLY BY MR. SWEETSER

1 transparent law enforcement; that, again -- and this was in the
2 *New Richmond News* case. After the opinion in *Senne*, New
3 Richmond Police Department decided to redact not only accident
4 reports but criminal investigative reports that may have used
5 driver's licenses to identify a person. And a similar ruling,
6 I'd submit, is going to chill transparency that is going -- may
7 result in the identification of criminal reports. I'd submit
8 that's not in the public interest.

9 THE COURT: Okay. Thank you very much.

10 MS. WILLIAMS: Thank you, your Honor. I appreciate
11 your time.

12 THE COURT: Mr. Sweetser, I'm going to have very
13 limited time for you; but --

14 MR. SWEETSER: I'm just going to make three points,
15 your Honor.

16 THE COURT: Well, let me ask the first question, which
17 Ms. Williams very astutely raises. What exactly are you asking
18 to have redacted?

19 MR. SWEETSER: Yeah. The -- the request is to redact
20 protected personal information contained in collision reports
21 unless consent from the person is obtained or a narrowly
22 construed specific exemption under the Act can be shown.

23 So we're asking for redaction unless the DPPA is followed
24 and one of the 14 exceptions can be shown.

25 Now, the way that that can be done is by the State Patrol

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
REPLY BY MR. SWEETSER

1 having a little form and the people have to check their box and
2 certify under the penalty of perjury and fraud and everything
3 else that they're asking for a permissible purpose.

4 THE COURT: But -- but let's be specific. So the
5 information.

6 MR. SWEETSER: Okay. It's the name, address, and date
7 of birth that's personal information that's contained in a
8 collision report.

9 THE COURT: Telephone number?

10 MR. SWEETSER: And telephone number.

11 THE COURT: Okay. So even the name. You think the
12 name should be redacted.

13 MR. SWEETSER: The name -- the name is personal
14 information according to the DPPA. And, if you follow that --
15 and it says in the DPPA that, even though you obtain it for a
16 permissible purpose, like the State Patrol obtains it for a
17 permissible purpose, re-disclosure has to have a permissible
18 purpose. Solicitation can never be a permissible purpose. So
19 you can give everything out if it falls within one of the 14
20 exceptions.

21 So, if you apply the Act and the clear, plain nonambiguous
22 language of the Act, it would include personal information; but
23 to solve the real issues with identity theft and other things
24 and stalking and solicitation and marketing, the address and the
25 telephone number are clearly what the people are -- are going

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
REPLY BY MR. SWEETSER

1 after and what create the threat to the person. And I agree
2 with you in that -- to that extent. The name itself, generally,
3 without other identifying information, probably wouldn't rise to
4 the level of irreparable harm.

5 A couple things, too, in the (b) (14) exception under the
6 Act and the *Camara* -- or the *Richmond News v. The City of*
7 *Richmond*. There, under (b) (14), they -- the Legislature in the
8 state enacted a specific law that -- that had a review process;
9 and, based upon an order of the custodian -- so there's
10 accountability and there's review -- the traffic collision
11 report could be released.

12 The Washington Legislature has never enacted a statute of a
13 similar nature; and to argue that 46.52.060, compiling
14 information about traffic accidents when they have all the
15 information, requires that they give the information to the
16 public for solicitation and everything else is just like
17 throwing everything at the wall and hoping something sticks.
18 It's not the same as the *Richmond News v. City of New Richmond*.

19 And, then, finally, just to conclude and it's a maxim in
20 tort law, the safety of the people takes precedence over
21 profits. And that's what this is all about. The safety and
22 privacy of every Washingtonian that's involved in a motor
23 vehicle accident and the putative class could be as large as a
24 million people.

25 Thank you, your Honor.

MOTION HEARING - MAY 25, 2017
MOTION FOR TEMPORARY RESTRAINING ORDER
REPLY BY MR. SWEETSER

1 THE COURT: Thank you. Counsel, I'm going to review
2 all of the case law, which will take me a little while; and I'll
3 issue a written opinion. Court's adjourned.

4 (Court adjourned at 11:33 a.m.).
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C E R T I F I C A T E

I, RONELLE F. CORBEY, do hereby certify:

That I am an Official Court Reporter for the United States District Court for the Eastern District of Washington in Spokane, Washington;

That the foregoing proceedings were taken on the date and at the time and place as shown on the first page hereto; and

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me or under my direction.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings.

DATED this 5th day of June, 2017.



RONELLE F. CORBEY, RPR, CSR, CRR
Official Court Reporter for the
U.S. District Court for the
Eastern District of Washington in
Spokane County, Washington